

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES' REPLY TO DEFENDANT DAVID REID'S
"RESPONSE TO PLAINTIFF'S NOTICE OF PENDING ISSUES"

The United States hereby responds to defendants David Reid's "Response to Plaintiff's Notice of Pending Issues" (Doc. 1813) as follows:

In “Defendant’s Joint Motion to Suppress the Fruit of Title III Wiretaps” (Doc. 1533), the defendants made numerous allegations of material intentionally or recklessly false statements or omissions by DEA Special Agent Richard Stark in his affidavit submitted in support of a wiretap in the investigation of this case, and they requested an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978).¹ After holding a preliminary hearing to determine whether the defendants were entitled to a *Franks* hearing, the Court “conclude[d] that the Defendants have come forward with enough evidence to make a ‘substantial preliminary showing’ under *Franks*” and ordered a “full

¹ The defendants' allegations are listed in the United States' response to Doc. 1533 at pages 34-43.

evidentiary hearing under *Franks*.” Doc. 1760.

Subsequently, on March 10, 2010, the Court scheduled a status hearing for April 8, 2010, and directed the parties to inform the court of pending issues that would need to be discussed at the hearing. (Doc. 1804).² In compliance with the Court’s order, the United States submitted a notice of pending issues on March 19, 2010. (Doc. 1812). One of the issues the United States requested to be addressed was “the parameters of the *Franks* Hearing, i.e., on which specific issues the Court has found that the Defendants have made a substantial preliminary showing of material misstatement or omission.” *Id.*

On March 24, 2010, defendant Reid filed a response to the United States’ notice in which he asserts that “a *Franks* hearing is not limited to factual development of the specific issues that the Court has already found to contain material misstatements or omissions.” Doc. 1813. To the contrary, however, a defendant is only entitled to a *Franks* hearing on the issues as to which he has made a substantial preliminary showing.

See United States v. Martinez-Garcia, 397 F.3d 1205 (9th Cir. 2005) (upholding district court’s granting of a limited *Franks* hearing on only one of defendant’s seven allegations of material false statements or omissions); *United States v. Beattie*, 119 Fed.Appx. 107, 109, 2004 WL 2943752 at *1 (9th Cir. 2004) (“the district court appropriately limited the *Franks* hearing to three issues because Beattie did not make a ‘substantial preliminary showing’ that he was entitled to a hearing on the other issues”). Accordingly, the United

² The hearing was vacated on April 7, 2010 on the defendants’ unopposed motion.

States reiterates its request that the Court limit the *Franks* hearing scheduled for May 3-5, 2010 to only those specific alleged material intentional or recklessly false statements or omissions as to which the Court has found the defendants have made a substantial preliminary showing.

Respectfully submitted,

GREGORY J. FOURATT
United States Attorney

ELECTRONICALLY FILED

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of April, 2010, I filed the foregoing pleading electronically through the CM/ECF system, which is designed to cause counsel of record for the defendants to be served by electronic means.

ELECTRONICALLY FILED

JAMES R.W. BRAUN
Assistant U.S. Attorney